IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Bail Appl..No. 4012 of 2007()

XCRIME NO.570/03 OF KASARAGOD POLICE STATION
CC.843/2005 of C.J.M.,KASARAGOD

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PETITIONER : ACCUSED:

ASHRAF, S/O.N.A.MOHAMMED,
NAIMARAMOOLA, VIDYANAGER P.O., KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTING THE
SUB INSPECTOR OF POLICE, KASARAGOD POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4012 of 2007

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Dated this the 3rd day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 4th accused. He, along with the co-accused, face allegations, inter alia, under Sections 353 and 506(ii) r/w. 34 .P.C. The alleged incident took place on 28.9.2003. Investigation is complete. Final report has already been filed. Cognizance has been taken. It is submitted that some of the co-accused have entered appearance and pleaded guilty. The petitioner was not available to face trial. The case against him has been split up and transferred to the list of long pending cases. Coercive processes have been initiated against the petitioner by the learned Magistrate. In these circumstances it is prayed that anticipatory bail may be granted to the petitioner.

2. The application is opposed by the learned Prosecutor.

3. I have considered all the relevant inputs. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in

favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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